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In re Application of	:
Van Saarloos et al.	:
Application No.: 09/831,971	:
PCT No.: PCT/AU99/01024	:
Int. Filing Date: 18 November 1999	:
Priority Date: 18 November 1998	:
Attorney's Docket No.: 8257.17USWO	:
For: LIMITED COHERENCE STEREO	:
OPHTHALMOSCOPE	:

This is a decision in response to the "RENEWED PETITION UNDER 37 C.F.R. §1.47(a)" filed on 12 June 2003, to accept the application without the signature of co-inventor Dr. Paul Van Saarloos. The required \$130 petition fee was received with the petition.

BACKGROUND

On 25 March 1999, applicants filed international application PCT/AU99/01024, which claimed priority of an earlier Australian application filed 18 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau 25 May 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 14 May 2000. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 18 May 2001.

On 16 May 2001, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, a copy of the international application, a copy of an Article 19 amendment, a copy of the Search Report, a copy of the International Preliminary Examination Report, a preliminary amendment and the requisite basic national fee as required by 35 U.S.C. 371(c).

On 21 June 2001, the United States Designated/Elected Office mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/EO/EO905), indicating that an oath or declaration and the surcharge for filing the oath or declaration later than 30 months from

the priority date as required by 37 CFR 1.492(e) needed to be filed. The notification set a one-month time period in which to respond.

On 21 December 2001, applicant filed a petition under 37 CFR 1.47(a). On 12 February 2003, the USPTO mailed applicant a decision indicating that applicant must file an affidavit from Mr. Christopher Edwards since he was the person with first hand knowledge of the facts in the mailing of the application papers to Dr. Van Saarloos.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

With respect to item (1), the \$130 petition fee under 37 CFR 1.17(h) was included with the earlier filed petition. The petition is missing item (2), Mr. Edwards has provided an affidavit which indicates that he sent Dr. Van Saarloos a copy of the application along with a copy of the declaration and power of attorney. According to the declaration of Ms. Aitken, filed with the earlier filed petition, Dr. Van Saarloos has never provided a signed declaration. With respect to item (3), Ms. Butler gave a statement of Dr. Van Saarloos' last known address in the earlier filed petition. With respect to item (4) above, applicant provided a declaration signed by Fred Reinholz in the earlier filed petition.

CONCLUSION

The petition under 37 CFR 1.47(a) is GRANTED.

The Application Division and the International Division are authorized to accept the application as a 37 CFR 1.47(a) application and to mail a filing receipt. The application will be given an international filing date of 11 April 2000 under 35 U.S.C. 363, and a date of 21 December 2001 under 35 U.S.C. 371.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

The application is being returned to the International Division for processing as the U.S. National Stage of the above-identified international application.



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